

The complaint

Mr H complains that N26 Bank GmbH unfairly lodged a marker with CIFAS about him.

What happened

Mr H has explained that he was operating a legitimate enterprise using a social media outlet I'll refer to as M. This particular outlet's messages usually disappeared once read. Mr H said he was operating a business that would increase the visibility of other users' "posts" and he was also taking funds from another person who claimed to be involved in "investing"- I'll refer to them as P.

Mr H said he would receive funds from P and use them to purchase crypto currency. Mr H said that P wasn't involved in this aspect of investing and he believed the funds he was receiving were the result of activity generated by P. Mr H has said he purchased crypto currency from special automated teller machines and an online marketplace. To support this enterprise, Mr H opened an account with N26 and within about a week, N26 started to receive notifications from various other banks that funds received by Mr H were the result of fraud.

The reports from these banks indicated the funds were the result of various types of financial frauds. These included an investment scam, also clothes/shoes and electronic orders that weren't fulfilled. These frauds had originated from posts on M and other social media platforms.

N 26 ring fenced various funds while they waited for the sending banks to request the return of these funds. They advised Mr H that checks were being conducted on his account. N26 received various requests from these banks for the return of fraudulent funds and Mr H's remaining account balance was used to pay back some of these requests. A few months later, N26 closed Mr H's account and lodged a CIFAS marker against him.

CIFAS is a national fraud prevention organisation that holds information on suspected fraudsters and their victims. Mr H became aware of the marker and complained to N26 about it, arguing that he was also a victim of the activities of P. Mr H didn't realise the funds he was receiving were the result of fraudulent activity and all his activities had been in good faith. N26 didn't change their decision to lodge the marker and refused to remove it.

Mr H complained to the Financial Ombudsman about the treatment he'd received from N26 and their refusal to remove the marker which was causing Mr H difficulties opening other financial accounts.

Mr H has argued that because N26 sent back most of the funds that resulted from fraudulent activity – he hasn't profited from them and together with his lack of knowledge about the source of the funds, this is evidence he wasn't involved in the frauds.

Mr H's complaint was looked into by one of our investigators who asked both parties for information and evidence. Mr H gave a detailed account of what happened and supplied various documents to support his claim. N26 failed to respond for some time and our

investigator issued her report based on the information which Mr H had provided. Mr H's complaint was upheld and sometime after this, N26 sent their file.

The original investigator was no longer available to manage the case, so it was moved to the second stage of our process which is a referral to an Ombudsman. I was passed the complaint and have had a chance to read the evidence from both Mr H and N 26. Follow up requests for information have been requested and I'm grateful to both parties for their contributions.

I can issue a provisional decision where it's felt the outcome is likely to change or to give both parties an understanding of my thinking. Because the original view was issued with only part of the information available, I'd intended to issue a provisional decision to allow both parties to consider my thoughts and have the chance to respond, and that would be even if I was going to uphold Mr H's complaint. Here, I'm currently thinking about not upholding it.

I issued a provisional decision where I said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

CIFAs have particular rules that must be satisfied before a marker against a person can be lodged. The standards required to lodge a marker are high and that's because the markers last for (usually) six years and can have a significant negative impact on someone.

In particular, there are two "pillars" that are relevant to this complaint that N26 have to meet:

- That there are reasonable grounds to believe that a Fraud or Financial Crime has been committed or attempted.*
- That the evidence must be clear, relevant and rigorous such that the member could confidently report the conduct of the subject to the police.*

N26 received numerous reports of fraudulent funds being received by Mr H over a short period of time. These reports were from multiple different banks. I'm satisfied the receipt of these reports meet the standards of the first "pillar".

The crux of this complaint is whether N26 have met the second "pillar". N26 believe Mr H was involved in the receipt of fraudulent funds and then withdrew these funds via an ATM or transferred them to another account held by Mr H with another bank. Mr H on the other hand says these payments were the result of his business venture promoting accounts on M's platform and purchasing crypto currency through payments received from P.

*N26's evidence is mainly centred on the use of the account, the receipt of the funds and their dispersal. They thought Mr H's use of the account was unusual and that it followed a pattern of use often associated with fraudulent activities. I can see why N26 considered Mr H's use of the account as unusual because within days of it being opened, it was receiving multiple small payments into it, with several being reported as fraudulent. I've examined the reports from the other banks and there are references to various scams. Some of the reports have details of the scam including the social media account they were linked to or shortened names that could be associated with Mr H (K**/Mr K** H**/K**123). N26 didn't believe Mr H's explanation about his activities and thought they met the standards required by CIFAS when they lodged a marker against him.*

** has been used to mask potential identification.*

Mr H has explained in some detail how his enterprise operated, and he admits he doesn't have some of the evidence needed to support his case because the platform (M) erases old messages. He has provided various screenshots to support his case. He said that he was unaware the funds he was receiving were fraudulent and points to a partial conversation (undated) with P. In it he asks P why there's a different name on one of the incoming payments. He's told that the person owed money to P and he'd asked them to send it straight to Mr H.

When I examined Mr H's statements, it's apparent that he was receiving numerous relatively small payments into his account from many different account holders. Mr H's evidence is that he was promoting pages on M, which accounted for some of the incoming payments and others were linked to payments sent by P. Many of the payments weren't reported as fraudulent, so I think it's reasonable to conclude that at least some of Mr H's business was legitimate.

The only reference I can find about crypto currency is a screenshot of Mr H's prices for promotional activities. This appears to me to refer to how he can be paid, rather than any crypto currency service he was offering.

I do have some difficulty with Mr H's explanation about the arrangements with P. Mr H has said P was involved in investing – but not crypto currency. P's arrangement with Mr H was that funds would be provided to him which Mr H would in turn use to purchase crypto funds and send back to P. In Mr H's evidence, P provides a "wallet" for receiving such crypto currency.

Mr H said he used specialist ATM's and an online marketplace to purchase crypto currency. His evidence is limited about this. Some of the screenshots he's sent are undated and others relate to activity prior to the opening of the N26 account. Mr H has indicated that he's since being locked out of his crypto account and is unable to provide details of his dealings about it.

I asked Mr H why P would go to the trouble of sending funds to him to buy crypto currency just to send back to P – which would entail additional costs to P because Mr H would naturally want to profit from this activity. Mr H explained that it was because P wasn't involved in that area of financial activity and had a lack of knowledge about it.

The alternative explanation was that P was using Mr H to change the fraudulent funds from cash into crypto currency to further frustrate efforts to retrieve it. So, I've thought about Mr H's explanations and it could be that he was effectively duped by P into receiving fraudulent funds and exchanging them for crypto currency which was then sent to P. Once in crypto form, stolen funds are hard to trace.

But, I'm brought back to the reports from various banks about stolen funds being sent to Mr H's account. The reports follow a similar pattern of the senders being duped into investing or buying goods and then being blocked. Mr H is never mentioned by name – but (as set out above) there are numerous references that appear to be versions of Mr H's name in the banking payment references.

It seems to me that this points to Mr H having more of an involvement than just receiving payments from P's customers. Why would someone use parts of his name as a reference if they were P's customers? I'm also doubtful that P - as an "investment" enterprise would also appear be a trader in goods, as there's no mention of that relationship in any of the evidence I've seen.

What is apparent from the evidence is that Mr H was in receipt of fraudulent funds and

removed them from his N26 bank account, although some of them were later returned to the senders by N26. But the sending of those funds back to their source by N26 isn't evidence that Mr H wasn't involved in the active movement of the stolen funds.

I think N26 had sufficient evidence to lodge a marker with CIFAS. That's because I think it was reasonable to believe that the reports from the other banks had sufficient information to indicate Mr H was more than an innocent dupe.

So, my current thoughts are that I won't be upholding this complaint.

I invited Mr H and N26 to give me any more evidence and information they wanted me to consider before issuing my final decision. N 26 didn't add anything further and Mr H responded, saying:

- He didn't think the withdrawals of cash was evidence of his involvement in fraud.*
- That the fraudulent payments only formed a small part of otherwise legitimate payments.*
- There is evidence of selling crypto currency with timings.*
- He believed that evidence of trading prior to the opening of the N26 account is supportive of his case that he was operating legitimately.*
- He didn't believe the lack of evidence of trading was unusual due to the way the site he used was operating and he had no reason to request further information from the senders.*
- He now thinks the clients he was dealing with may have been responsible for the fraudulent funds, but he was unaware of them at the time.*
- He explains that his name was used on the bank transfers because he'd given it to his client for them to pass on to the senders of the funds.*
- He commented that earlier Ombudsman's decisions had referred to independent investigations before CIFAS markers were lodged.*
- He believes that because he didn't immediately remove the fraudulent funds from his account – this supported his case that he wasn't involved in the original scams.*
- He believed the complaint had been rushed and he was assumed to be guilty.*
- He believed that the facts have been interpreted against him when he's been consistent throughout the complaint and supplied evidence.*

Having received further information, I issued a second provisional decision reversing my previous one – where I said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I'm grateful for the patience of both parties whilst additional evidence has been sought and considered. This complaint is finely balanced, and I've thought carefully about the evidence provided by both parties. Mr H has now been able to provide evidence that supports his

assertion that he was purchasing crypto funds and advertised this as a service. He's also been able to clarify the dates when some of this activity happened and evidence that one of the fraudulent payments he received was later returned to P as a bitcoin purchase.

This transaction, along with screenshots, shows that Mr H questioned one of the fraudulent payments he received into his account. It's specific about the amount (£75) that Mr H was selling bitcoin for which included his profit. The fraud report linked to this payment refers to a scam purchase for clothes, much like some of the other fraud reports. Whilst there's an element of interpretation involved here, it's plausible that whoever was behind the scam was also responsible for more than one of them because of the similarities in the way they operated.

One of the incoming reports had a social media name that appeared to be linked to Mr H. He was able to provide evidence this account was likely operated by someone unconnected to him.

Further details from another of Mr H's accounts has identified patterns of payments similar to those identified on his N26 account. These being numerous small incoming payments that were withdrawn either as cash or sent to other accounts. There are no reports of fraudulent activity associated with this account and there's evidence that supports Mr H's version of events that he was paying other media influencers to promote social media accounts.

Mr H believes that N26 should have contacted him prior to lodging the marker based on CIFAS guidance. This guidance wasn't released by CIFAS when N26 lodged the marker, although it came out soon after. What I would say is that Mr H was aware of the marker shortly after it was lodged and contacted N26 numerous times about it and presented his version of events. So, whilst N26 could have contacted Mr H prior to the lodgement of the marker, N26 were aware of the case Mr H was trying to make. As I've mentioned before, they didn't believe his version of events and were satisfied they'd met the standards for lodging the marker.

Mr H was of the opinion that he'd been presumed guilty. That's not the case here. The outcome of his complaint is based on an independent assessment of all the evidence and N26 lodged their marker based on their own investigation. Similarly, my first provisional decision was based on an assessment of the evidence. As I've said this complaint is finely balanced as on the one hand there's a large number of fraud reports that are submitted about Mr H related to an account that he'd only recently opened. The removal of funds supports a view that he may well have known the source of the funds was suspicious, so I can see why N26 lodged the marker in the first place.

On the other hand, Mr H has presented a version of events that could be seen as him being taken advantage of by a scammer. He himself admits that he doesn't operate his businesses in that way anymore and is far more discerning when it comes to receiving money from others. I think it's apparent that unidentified third parties were responsible for what looks like a wide-ranging set of scams that targeted people with various frauds for small amounts of money.

I've also taken into account Mr H's age and experience when operating his "business interests". It seems as though others, who were far savvier, have taken advantage of his relative inexperience to use his crypto business to move stolen funds.

There are some aspects to the complaint that haven't been answered, such as evidence of other crypto purchases for P because the records are no longer available, but overall, I think there's sufficient doubt to support the case that the marker should be retained.

Mr H believes he should receive the original award set out in the investigator's review of his complaint, which was £300. But, when examining the investigation that N26 carried out and the overall evidence available at the time, I don't think it was unreasonable that N26 lodged the marker.

But, the relevance here is that the overall evidence now shows Mr H was more victim than perpetrator, so the fair and reasonable thing to do is to remove the marker, understanding that it's already been operating for the past three years, but I think it would be unfair for N26 to pay Mr H any compensation based on the evidence available to them at the time.

I invited Mr H and N26 to give me any more evidence and information they wanted me to consider before issuing my final decision. N26 commented that they were satisfied they'd met the standards required of CIFAS when the original marker was lodged. But, they understood a resolution to the complaint was required and accepted my second provisional decision. Mr H didn't have anything further to add about his complaint, but also accepted the provisional decision.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, and as both parties accepted my latest provisional decision, I see no reason to reach a different conclusion. So, this final decision confirms the findings set out in my second provisional decision.

Putting things right

Remove the CIFAS marker lodged against Mr H.

My final decision

My final decision is that I uphold this complaint against N26 Bank GmbH and they're instructed to remove the CIFAS marker against Mr H.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 25 November 2022.

David Perry
Ombudsman